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Social Dimensions of Law and Justice by Julius Stone

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SOCIAL DIMENSIONS OF LAW AND JUSTICE. By Julius Stone. Stanford: Stanford University Press. 1966. Pp. xxxv, 933. \$18.50.

In reading for review Julius Stone's serious work of monumental scholarship and erudition, *Social Dimensions of Law and Justice*, two images came to characterize my initial irreverent and perhaps flippant reaction.

The first derives from a short story, "The Library of Babel" by the Argentine writer Jorge Luis Borges. His story concerns a vast library, no two books of which are identical. The physically uniform volumes of this library contain, altogether, all the possible combinations of the

15. A device that can be used recurrently is critical self-study and analysis of problems confronting an agency, often with the aid of independent experts, which the S.E.C. used effectively, under an authorization by Congress, in its special study of the Securities Markets in 1961-63. *Id.* 70-79.

16. There is a discussion of methods for attracting personnel of the needed quality. *Id.* 86-88.

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orthographical symbols. Without discoverable order, the library thus contains everything expressible in all possible languages: all truth, all error; all past, present, future—everything meaningful and unmeaningful. Within the library, men conjecture that there is one total book, a compendium of all volumes, a book which to read would make a man a god.

The second image is a mute, nodding, puckish Harpo Marx. In a Marx brothers' movie, Harpo wears a long white coat which has large pockets stitched in the lining. Harpo's sticky fingers soon fill the pockets with anything unattached or detachable. Inevitably, a scolded yet rebellious child trying to please, Harpo must empty his pockets: a book, a dress, a hat, a blow-torch—lit, a block of ice, a fire hydrant, a pig, and so on, until the ground around him resembles a scrambled American supermarket.

Each, Borges's library, Harpo's coat, I take to be apt images for the universe: one for its infinite variety; the other for its infinite "unpackability." In the reduced sidereal scale of the legal galaxy, Stone, in this and two companion volumes, *Legal System and Lawyers' Reasonings* (1964) and *Human Law and Human Justice* (1965), has written a total book, like the relation of law to society, various and endlessly "unpackable."

The effort of this encyclopedic work, riveted throughout with myriad footnotes, is "to state in orderly fashion the contexts and the range of tasks confronting modern democratic governments in using law as an instrument of social control, and as a means towards justice." In attempting to do so, Stone draws on all relevant sources and fields of knowledge, particularly sociology, political science, anthropology, and economics. In fattening his already husky subject he also undertakes a critical survey of present knowledge of law, "from the juristic, historical, anthropological, and sociological sides,"¹ and to delimit the more rapidly changing areas of statutory and case law.

Stone eschews natural law or, at least in this book, leaves the problem in abeyance, adopting the position that the concern of sociological jurisprudence is with *de facto* interests which are being pressed. He takes many of his insights from the vital thought of some of the jurisprudes and adopts the position that law and justice are culture-specific, that is, resting upon the social inheritance of the society in question, its values, beliefs, motivations and methods of acting, springing "from long interaction of group members in a common environment and in the context of their own problems and common institutional arrangements for meeting these."² And again, quite rightly, he views law as merely one of many diverse modes of social control which are complementary. He notes the

1. J. STONE, *SOCIAL DIMENSIONS OF LAW AND JUSTICE* 1 (1966).
2. *Id.* 116.

criticalness of our age respecting law, social control, and human development due to the extension of the franchise and the spread of the democratic principle and ideal, mass education and increased political participation, post-industrial technology and specialization, instantaneous mass communication, urbanization, population increase, and the decline in possibilities of revolutionary resistance, at least in some areas, because of military weapons and power.

It is in this context that justice is defined, for justice is a human, a never-ending quest. "Each present generation must . . . identify for itself the enclaves of justice which it holds, in the light of its own concerns, needs, and aspirations, and its own understanding of historical experience."³

Justice and sociological jurisprudence are two distinct, but intimately related concerns. "The gist of the theory of justice is to assess the degree to which *de facto* interests *ought* to be secured in view of other competing interests. The main gist of sociological jurisprudence is to identify the interests actually being pressed, and the conflicts between them, and to assess the degree and manner in which these are secured by conferment of legal 'rights' . . ." This is an excellent statement, but it must be noted that the task of each is profoundly difficult and conflict-ridden. The specifics of the projects are intensely debatable.

After an introductory study, Stone engages in a survey of twentieth century legal developments and issues. Undertaking the method of sociological jurisprudence, his concern is to survey *de facto* interests. His procedure is to ascertain the interests being pressed, to define the limits of legal support which would be given them, to determine what legal resources are available to secure the interests, and to state the limitations on legal actions which may affect the support which can be given the interests.

The catalogue of interests examined is comprehensive, as the following sample will suggest: physical integrity, immunity from injury, privacy, reputation, free speech, family relations, property, contract, and labor. Social interests of general security, health, safety, security of transactions and acquisitions, and interests of social, political, religious, and economic institutions are extensively treated.

For each interest examined, Stone articulates the claim being pressed, generally together with some evidence and history of the pressure. He notes the status of the legal recognition of the claim and statutory and case law respecting it; the effects of legal doctrine on the claim, and vice-versa; the pressures and interests opposing the claim; and possible social

3. *Id.* 110.

effects of realization of the claim. So presented, the dialectic of social and legal interaction is made obvious.

In his treatment of interests, Stone deals quickly with an extraordinary number of very difficult issues, strangled and coiled about with snakes of ideology and partisanship. These tightly packed discussions of particular interests are highly informative and stimulating; each ranges over large, detailed bodies of literature and reaches significant central issues regarding each interest.

In his exposition, claims and interests ramify and intersect, filiating rapidly, and thus revealing the ultimate futility of classifications of interests. Stone escapes any charge of system-building at the expense of reality here, for he fully appreciates the complexity of interests. His own classifications, pedagogically excellent, reveal rather than hide this complexity.

While I would recommend this portion of the book to every reader desiring a comprehensive survey of legal and social interests and issues, it must be noted that the different interests are not discussed with the same degree of thoroughness. This may reflect the empirical status of actual claims and issues but some of the unequal treatment seems fortuitous. For example, divorce is treated in eleven pages, public health is treated essentially in two. Depth is wholly lacking in the discussion of public health. Drug regulation, food inspection, pollution, drug experimentation, products liability, public health dangers from the use of insecticides, medical specialization and costs, housing, quality and availability of public health institutions are not treated. It is true that Stone does refer to some of these matters in footnotes, but I do not believe that the unequal treatment can be justified by reference to the importance of the different subjects or to the interests of probable readers of the book. More likely, it reflects Stone's areas of superior expertise and the impossibility of the herculean task he set himself.

Perhaps enough has been said to disclose that Stone's approach roughly amounts to a kind of non-quantified systems analysis. To his great credit, Stone urges that comprehensive, interdisciplinary, systematic research in law and society be carried out in an institutional fashion, that is, in a permanent research institution dedicated to the Faustian quest of uncovering systemic problems and proposing solutions to them. Such public policy research institutions exist, although their size and interests fall short of what Stone has in mind. The Center for the Study of Democratic Institutions, the Brookings Institution, the University of California Center for the Study of Law and Society, and some of the

"think" corporations engage in such research. But Stone feels that legal scholarship should be at the forefront. As reason, he states: "It must be clear to them [legal scholars] . . . that as areas of judicial choice-making expand with changing conditions and the piling up of relevant data, juristic responsibility must also expand. Juristic criticism must share the burden of testing the justification for emergent rules, scholarly responsibilities growing precisely to make good the limits which judges cannot escape."⁵ This is true but when the statement is compared with the proposal that elicited it, it appears that Stone is either over-inflating the role of judicial decision-making in our society or is assuming that courts will be used increasingly, consciously or unconsciously, as avenues for the realization of new demands. While either of these may be correct, it would seem more appropriate for such research to exist for legal and social education generally, for lawyers influence the entire social decision-making system from every role which lawyers fill, from alter ego for litigants to governmental or corporate bureaucrat to social critic and social engineer.

What I find to be an overbalanced emphasis may be due to the heavy reliance of legal scholarship, in the common law tradition, upon appellate decisions and functions. While it is true that the appellate judiciary ranges widely as ultimate decision-maker, it is also true that many problems will not reach it because lawyers will not or cannot frame the case. Similarly, if lawyers are not made sensitive to emerging interests, democratic theory, and the findings of the social sciences, vast areas of decision-making, which they in part administer and in which they engage, but which are effectively removed from judicial review or the control of the more visible administrative agencies, will pass relatively unexamined. Issues of research and development, contract decisions of the Department of Defense, the operations of the CIA, the administration of welfare benefits and the like, are relatively invisible and unscrutinized areas of decision-making and are potent with enormous consequences for individual and public interests. Some emphasis on the role of the lawyer as an unattached, practical intellectual and social critic would, therefore, be welcome.

Regardless of emphasis, the suggestion is well-taken. All times are unprecedented. But for all of the novelty of the present, what is most unprecedented is the fact that we have an intellectual perception of the vast and systematically connected problems which arise in existing social systems, situations, and circumstances. Accompanying this is some will to solve and resolve, to comprehend and accomplish, to master in

5. *Id.* 81-82.

humanity. A sense of urgency attends—an apprehension that just as we are coming to a maturity of perception, the problems have achieved an escape velocity, have become asymptotic on the graphs. Given existing social attitudes, the ability and means of remedy remain pedestrian. Research and educational institutions such as Stone envisages are essential.

The last half of this book treats the general problem of legal stability and change. The question whether legal institutions have a logic of development independent of social and economic institutions is extensively examined. The meaning, operation, and effect of ethical convictions, attitudes, and ideals is investigated, as well as the question of law and power and the use of law as an instrument of social control. In this comprehensive examination, Stone attempts to draw on all relevant jurisprudential and social science knowledge. He concludes with a fine chapter on law and social control and the intimate relation of justice to contemporary facts.

Because of its topicality and because it may serve as a sample of Stone's manner of combining sociological insight with legal questions, a rough, glossing paraphrase of this last chapter, in which there is so much to agree with, may be useful.

Legal and non-legal social controls are interdependent and the scope of effective direct social control through law is a function of other social controls, direct or indirect. (A prime example of a consciously applied indirect social control is Keynesian monetary policy.) Effectively, through such controls, as well as through unconscious indirect controls, individual social choices are regulated in the range of choices made available or through the system of expectations which is created and enforced by informal social pressures. The increased use of this kind of policy control, directly, and the use of administrative decisions which treat individual cases from the point of view of social and economic policies to be served, lead to increasing conflict between ideals and feelings of personal autonomy and liberty. Conflicts arise not only from governmental policy, administration, and inaction, but also from the actions of other organizations and social institutions which regulate choice by limiting alternatives, by creating expectations, and by conditioning and channelling activities and responses. The occasional unexpected juncture, in frustrated chorus, of conservatives, consumers, farmers, hippies, intellectuals, the poor, and sensitive individuals generally is a response to the felt indirect control of such institutions as the giant corporations, the advertising and public relations industry, mass communications, the structure of medical care, and the encompassing indirect control of modified capitalism and its attendant mythology. So extensive is this type of influence and control that one might refer to such institutions as quasi-governmental bodies.

Social controls, of course, are not always clear cut or effective. Generally, it is a question of more or less. Additionally, the heuristic device of specifying controls obscures their subtle and complex manner of operation: in combination, in conflict, at a tangent, and so forth, varying in strength, quality, and quantity.

As identification and understanding of the variety and complex operation of existing direct and indirect social controls increase, it may be possible, subject to the ability of people to undergo change of patterns of living and understanding, to reduce or dissolve controls which insensibly inhibit human freedom, initiative, and fulfillment.

This, of course, is planning—direct legal control; it is opposed through a number of arguments: that we do not know enough to “experiment” with the organism of society; that conscious control is a greater threat to liberty than unconscious control; that we cannot decide which goals and values to implement; and that the public is satisfied and thus not interested,—elitist planners are not wanted. There is enough truth in such arguments that their objections must be taken into account and resolved as a part of the task of any planning.

There is no doubt, however, that we are headed toward increased planning. Given the general success of the administrative social service or welfare state and the continued vitality of democratic ideals, raising the general level of education, and, therefore, increasing intelligent individual participation in decision-making, is supremely important both to facilitate and to democratize planning.

The role of lawyers and administrators in the expansion of legal control is also very important, particularly in the area of discretionary or policy decisions. The same expanded perception of task, of the necessity to correct the myopia of policy decisions and to mesh them with general social needs and democratic ideals, applies to all bureaucracies, governmental, corporate, or associational, for society is necessarily shaped, in one way or another, by decisions of such institutions.

At the time, it must be recognized that some democratic values conflict and cannot all be realized together. It must be understood, particularly as planning becomes more conscious, that when value conflicts arise, the question becomes which value shall win out and to what degree. Some spontaneity, some freedom, some efficiency may, for example, have to be relinquished for greater security or well-being.

Merely to make this general statement regarding democratic planning is to feel the enormous complexity and difficulty attending it—to regard the very notion as sheer utopianism. To judge so, however, while being cynical about human potentiality, is to fail to see human life as historical, as a process and continuing development which, as some problems

are resolved or fade, create new ones. The dialectical kaleidoscope of culture, conditioning, needs, wants, resources, abilities, experience, will, and ideals incessantly turns and projects new patterns. This points to the endlessness of the tasks of sociological jurisprudence: continuing observation, review, criticism, and learning for each culture and society as it changes through time. So too, because of its dependency upon contemporary fact, does the content of justice change.

This last point is perhaps subtle for, while for Stone the meaning of justice or a just result or just distribution is specific to the circumstances of each society—for the particular “constituency” of justice, the position is not one of naive cultural relativism, at least not to the degree of incompatibility with absolute values in a specific society. In effect, justice is a term which is always defined by reference to the conditions and values of a certain society. Cross or supra-societal judgments lack proper factual connection and are merely moral exhortations or recommendations for treatment of particular kinds of cases. More mundanely, there is no natural law.

Many individual points and statements in Stone’s exposition are debatable and his interpretations of some works are questionable. In his intellectual odyssey he engages in a lawyer-like eclecticism in the selection of evidence and theory, a method to be admired in fields where a thousand schools contend but which leads to an imbalance of treatment. Stone’s voracious, intellectual appetite occasionally gives rise to stylistic attitudes of omniscience and professional non-statement which may or may not be based in mastery and comprehension. Given the universality of his task, nothing short of comprehensive generalism would have been adequate, but the difficulties involved in making equally intelligent judgments in all the disciplines covered are great. In addition, in some sections of the book there is material which, while more or less interesting and informative, does not contribute to the conclusions drawn. From this, I infer that the intellectual display is not always essential either to the conclusions or to the reader’s understanding.

There is also a lack of clarity as to Stone’s own conviction on certain matters. The difference, in some areas, between sociological jurisprudence and a specific theory of justice is simply the difference between an assertion of empirical connection and an assumption of connection because of the observer’s own moral attitudes and convictions. Where the empirical evidence is thin, suspicions rise. It may be, however, that Stone has clarified his positions elsewhere.

Stylistically, the book is neither pleasurable nor easy to read. The prose is thick and dense, although always intelligible. Stone seems to suffer from a precept of military training: “Tell ’em what you’re gonna

tell 'em; tell 'em what you told 'em." There is also a fault of name-dropping and a repetition of epithets applied to individuals. For example, so many times is the reference made that it has become hard for me to think of Llewellyn except as "lamented." No doubt such things merely reflect Stone's legal cosmopolitanism and his good and close relations with the renowned figures of legal scholarship and imagination. But such habits are irritating and distracting.

The book contains literally thousands of footnotes, most of which are multiple citations and many of which contain a qualifying or expanding text. The footnoting does not seem to be consistent, and it is difficult to determine why certain material, not supporting or argumentative, but as relevant as anything in the loosely connected text, was relegated to a footnote or, on the other hand, why certain parts of the text, not particularly important, were not demoted to footnotes. On the positive side, the footnotes provide a large bibliography on points interesting to the specific reader. However, because of the footnoting, extraneous materials, and the number of different studies Stone chose to house between two covers, the book, while coherent, tends not to cohere, but rather to fall apart into separate, tenuously connected portions.

While these are housekeeping or editorial criticisms, cumulatively they go to the communication of substance. The presentation is so distracting that it is difficult to determine what is intended except on a third or fourth reading. This fault, however, is not serious in a work which is less devoted to proving a thesis than to exemplifying one and which is intended as a complete reference work.

It is probably clear that I have generally stood at the outskirts of this monolith, whacking at its edges and skirmishing in its suburbs. My criticism has been limited to matters of style and emphasis. In view of Stone's goal and the general accuracy of his assessments, it is hard to fault him for unevenness of treatment. I know of no work which approaches this one in its theoretical and practical comprehensiveness in relation to contemporary problems of law and society. As a survey with depth, it is incomparable. The effort of this book can only be admired and appreciated. It is a yeoman work in bringing to legal scholars and lawyers the significant findings, theories, and approaches of the social sciences as they relate to and increase our understanding of society and social ordering generally.

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